

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

KATHRYN L. JAGOW, DDS, individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

ASPEN AMERICAN INSURANCE  
COMPANY,

Defendant.

No.

COMPLAINT—CLASS ACTION

JURY DEMAND

**I. INTRODUCTION**

Plaintiff, KATHRYN L. JAGOW, DDS (“Jagow”), individually and on behalf of all other similarly situated members of the defined national class (the “Class Members”), by and through the undersigned attorneys, brings this class action against Aspen American Insurance Company (“Aspen” or “Defendant”) and alleges as follows based on personal knowledge and information and belief:

**II. JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one member of the proposed Class is a citizen of a state different from that of Defendant, the proposed Class has more than 100 class members,

COMPLAINT—CLASS ACTION - 1

**KELLER ROHRBACK L.L.P.**

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1 and the aggregate amount in controversy exceeds \$5,000,000. The Court has supplemental  
2 jurisdiction over Plaintiffs' state law claims under 28 U.S.C. § 1367.

3         2. This Court has personal jurisdiction over Defendant because Defendant is  
4 registered to do business in Washington, has sufficient minimum contacts in Washington, and  
5 otherwise intentionally avails itself of the markets within Washington through its business  
6 activities, such that the exercise of jurisdiction by this Court is proper. Moreover, jurisdiction  
7 exists because the claims of Plaintiff arise out of and directly related to Defendant's contacts  
8 with Washington. Plaintiff has standing to bring each claim against Defendant as a class  
9 representative whose claims are typical and common of the class under Fed. R. Civ. P. 23.  
10

11         3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3) because the  
12 Court has personal jurisdiction over Defendant, a substantial portion the alleged wrongdoing  
13 occurred in this District and the state of Washington, and Defendant has sufficient contacts with  
14 this District and the state of Washington.  
15

16         4. Venue is proper in the District of Washington pursuant to 28 U.S.C. § 1391(b)(2)  
17 because a substantial part of the events or omissions giving rise to the claims at issue in this  
18 Complaint arose in this District. Plaintiff's place of business is located in Mountlake Terrace,  
19 Snohomish County, Washington. This action is therefore appropriately filed in the Seattle  
20 Division of the United States District Court for the Western District of Washington.  
21

### 22                                 **III. PARTIES**

23         5. Plaintiff KATHRYN L. JAGOW, DDS, owns and operates a dental practice  
24 located at 22905 56th Avenue West, #101, Mountlake Terrace, WA 98043.  
25  
26

#### IV. NATURE OF THE CASE

9. Defendant Aspen issued one or more insurance policies to Plaintiff, including Building, Blanket Dental Practice Personal Property and Income Coverage Part and related endorsements, insuring Plaintiff's property and business practice and other coverages, with effective dates of October 29, 2019 to October 29, 2020

11. Defendant's policy issued to Plaintiff is an "all-risk" policy that provides broad property and business interruption coverage except where excluded.

COMPLAINT—CLASS ACTION - 3

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1           13. Defendant Aspen’s policy issued to Plaintiff includes Practice Income Coverage,  
2 Extra Expense Coverage, Extended Practice Income Coverage and Civil Authority Coverage.

3           14. Plaintiff paid all premiums for the coverage when due.

4           15. On or about January 2020, the United States of America saw its first cases of  
5 persons infected by COVID-19, which has been designated a worldwide pandemic.  
6

7           16. On February 29, 2020, Washington Governor Jay Inslee issued Proclamation 20-  
8 5, declaring a State of Emergency for all counties in the state of Washington as a result of Covid-  
9 19. Thereafter, he issued a series of certain proclamations and orders affecting many persons and  
10 businesses in Washington, whether infected with COVID-19 or not, requiring certain public  
11 health precautions.

12           17. On March 19, 2020, Governor Inslee issued a “PROCLAMATION BY THE  
13 GOVERNOR AMENDING PROCLAMATION 20-05: 20-24 Restrictions on Non Urgent  
14 Medical Procedures.” dated March 19, 2020, which prohibited dental practitioners from  
15 providing dental services but for urgent and emergency procedures:  
16

17           WHEREAS, the health care person protective equipment supply chain in  
18 Washington State has been severely disrupted by the significant increased use of  
19 such equipment worldwide, such that there are now critical shortages of this  
20 equipment for health care workers. To curtail the spread of the COVID-19  
21 pandemic in Washington State and to protect our health care workers as they  
22 provide health care services, it is necessary to immediately prohibit all hospitals,  
23 ambulatory surgery centers, and dental orthodontic, and endodontic offices in  
24 Washington State from providing health care services, procedures and surgeries  
25 that require personal protective equipment, which if delayed, are not anticipated  
26 to cause harm to the patient within the next three months.

18           18. Proclamation 20-24 provides that one of the reasons it was issued was that “the  
worldwide COVID-19 pandemic and its progression throughout Washington State continues to  
threaten the life and health of our people as well as the economy of Washington State, and  
remains a public disaster affecting life, health, property or the public peace.”

COMPLAINT—CLASS ACTION - 4

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1           19.     On information and belief, Proclamation 20-24 refers to property damage  
2 throughout Washington State, including in Snohomish County where Plaintiff's business is  
3 located.

4           20.     On March 23, 2020, Mr. John Weisman, Secretary of Washington State's  
5 Department of Health, issued a list of directives and orders regarding healthcare matters and  
6 mandated that all healthcare practitioners, including dental, cease all elective and non-urgent  
7 medical procedures and appointments as of the close of business on March 24, 2020, and  
8 throughout the duration of the catastrophic health emergency.

9  
10          21.     On March 25, 2020, the Washington State Dental Association recommended that  
11 all dental practices follow the mandates and orders of the Washington Department of Health and  
12 postpone all non-emergency or non-urgent dental procedures throughout the duration of the  
13 catastrophic health emergency.

14  
15          22.     On March 30, 2020, Governor Inslee issued Order Number 20-03-30-01 affecting  
16 persons and residents within the State of Washington, which includes a "Stay-at-Home Order"  
17 requiring all persons living in Washington to stay in their homes or places of residences except  
18 under certain specified circumstances.

19          23.     Governor Inslee's Proclamations and Orders related to COVID-19 have been  
20 extended and modified from time to time.

21  
22          24.     Governors and civil authorities in other states have issued similar orders and  
23 proclamations, for similar reasons.

24          25.     Due to Governor Inslee's order, beginning on or about March 19, 2020, Plaintiff  
25 was unable to use her property for its intended and insured purpose.

1           26. Plaintiff's property sustained direct physical loss and/or damages related to  
2 COVID-19 and/or the proclamations and orders.

3           27. Plaintiff's property will continue to sustain direct physical loss or damage covered  
4 by the Aspen policy or policies, including but not limited to business interruption, extra expense,  
5 interruption by civil authority, and other expenses.  
6

7           28. Plaintiff submitted a claim for coverage for its losses covered by the Aspen Policy  
8 on or about March 25, 2020.

9           29. By letter dated June 8, 2020, Defendant denied Plaintiff's claim.

10          30. Upon information and belief, Aspen has denied and will deny coverage to other  
11 similarly situated policyholders.  
12

### 13                           V.      CLASS ACTION ALLEGATIONS

14          31. This matter is brought by Plaintiff on behalf of itself and those similarly situated,  
15 under Federal Rules of Civil Procedure 23(b)(1), 23(b)(2), and 23(b)(3).

16          32. The Classes that Plaintiff seeks to represent are defined as:

17           A.      ***Practice Income Breach of Contract Class:*** All persons and entities in the  
18 United States issued an Aspen policy with Practice Income Coverage who suffered a  
19 suspension of their practice at the covered premises related to COVID-19 and/or orders  
20 issued by Governor Inslee, other Governors, and/or other civil authorities and whose  
21 Practice Income claim has been denied by Aspen.  
22

23           B.      ***Practice Income Declaratory Relief Class:*** All persons and entities in the  
24 United States issued an Aspen policy with Practice Income Coverage who suffered a  
25 suspension of their practice at the covered premises related to COVID-19 and/or orders  
26 issued by Governor Inslee, other Governors, and/or other civil authorities.

1           C.     ***Extra Expense Breach of Contract Class:*** All persons and entities in the  
2 United States issued an Aspen policy with Extra Expense Coverage who incurred  
3 expenses while seeking to minimize the suspension of business at the covered premises in  
4 connection with COVID-19 and/or orders issued by Governor Inslee, other Governors,  
5 and/or other civil authorities and whose Extra Expense claim has been denied by Aspen.  
6

7           D.     ***Extra Expense Declaratory Relief Class:*** All persons and entities in the  
8 United States issued an Aspen policy with Extra Expense Coverage who incurred  
9 expenses while seeking to minimize the suspension of business at the covered premises in  
10 connection with COVID-19 and/or orders issued by Governor Inslee, other Governors,  
11 and/or other civil authorities.  
12

13           E.     ***Extended Practice Income Breach of Contract Class:*** All persons and  
14 entities in the United States issued an Aspen policy with Extended Practice Income  
15 Coverage who suffered a suspension of their practice at the covered premises related to  
16 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil  
17 authorities and whose Extended Practice Income claim has been denied by Aspen.  
18

19           F.     ***Extended Practice Income Declaratory Relief Class:*** All persons and  
20 entities in the United States issued an Aspen policy with Extended Practice Income  
21 Coverage who suffered a suspension of their practice at the covered premises related to  
22 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil  
23 authorities.  
24

25           G.     ***Civil Authority Breach of Contract Class:*** All persons and entities in the  
26 United States issued an Aspen policy with Civil Authority Coverage who suffered a  
suspension of their practice at the covered premises related to the impact of COVID-19

1 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities  
2 and whose Civil Authority claim has been denied by Aspen.

3 H. ***Civil Authority Declaratory Relief Class:*** All persons and entities in the  
4 United States issued an Aspen policy with Civil Authority Coverage who suffered a  
5 suspension of their practice at the covered premises related to COVID-19 and/or orders  
6 issued by Governor Inslee, other Governors, and/or other civil authorities.  
7

8 33. Excluded from the Class are Defendant's officers, directors, and employees; the  
9 judicial officers and associated court staff assigned to this case; and the immediate family  
10 members of such officers and staff. Plaintiff Jagow reserves the right to amend the Class  
11 definition based on information obtained in discovery.  
12

13 34. This action may properly be maintained on behalf of the Class under the criteria  
14 of Rule 23 of the Federal Rules of Civil Procedure.

15 35. **Numerosity:** The members of the Class are so numerous that joinder of all  
16 members would be impractical. Plaintiff is informed and believes that the proposed Class has  
17 hundreds of members. The precise number of class members can be ascertained through  
18 discovery, which will include Defendant's records of policyholders.  
19

20 36. **Commonality and Predominance:** Common questions of law and fact  
21 predominate over any questions affecting only individual members of the Class. Common  
22 questions include, but are not limited to, the following:

23 A. Whether the class members suffered covered losses based on common  
24 policies issued to members of the Class;

25 B. Whether Aspen acted in a manner common to the Class by wrongfully and  
26 uniformly denying claims for coverage relating to COVID-19 and/or orders issued by



1 Governor Inslee, other Governors, and/or other civil authorities on the same grounds  
2 and/or otherwise in breach of the law of contracts;

3 C. Whether Practice Income Coverage in Aspen's policies of insurance  
4 applies to a suspension of practice relating to COVID-19 and/or orders issued by  
5 Governor Inslee, other Governors, and/or other civil authorities;

6 D. Whether Extra Expense Coverage in Aspen's policies of insurance applies  
7 to efforts to minimize a loss relating to COVID-19 and/or orders issued by Governor  
8 Inslee, other Governors, and/or other civil authorities;

9 E. Whether Extended Practice Income Coverage in Aspen's policies of  
10 insurance applies to a suspension of practice relating to COVID-19 and/or orders issued  
11 by Governor Inslee, other Governors, and/or civil authorities;

12 F. Whether Civil Authority Coverage in Aspen's policies of insurance  
13 applies to a suspension of practice relating to COVID-19 and/or orders issued by  
14 Governor Inslee, other Governors, and/or civil authorities;

15 G. Whether Aspen has breached its contracts of insurance through a blanket  
16 denial of all claims based on business interruption, income loss or closures related to  
17 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil  
18 authorities;

19 H. Whether, because of Defendant's conduct, Plaintiff and the class members  
20 have suffered damages; and if so, the appropriate amount thereof; and

21 I. Whether, because of Defendant's conduct, Plaintiff and the class members  
22 are entitled to equitable and declaratory relief, and if so, the nature of such relief.  
23  
24  
25  
26

1           37.     **Typicality:** Plaintiff's claims are typical of the claims of the members of the  
 2 class. Plaintiff and all the members of the class have been injured by the same wrongful practices  
 3 of Defendant. Plaintiff's claims arise from the same practices and course of conduct that give rise  
 4 to the claims of the members of the Class and are based on the same legal theories.

5           38.     **Adequacy:** Plaintiff will fully and adequately assert and protect the interests of  
 6 the class and has retained class counsel who are experienced and qualified in prosecuting class  
 7 actions. Neither Plaintiff nor its attorneys have any interests contrary to or in conflict with the  
 8 Class.  
 9

10           39.     **Federal Rule of Civil Procedure 23(b)(1), the Risk of Inconsistent or Varying**  
 11 **Adjudications and Impairment to Other Class Members' Interests:** Plaintiff seeks  
 12 adjudication as to the interpretation, and resultant scope, of Defendant's policies, which are  
 13 common to all members of the class. The prosecution of separate actions by individual members  
 14 of the class would risk inconsistent or varying interpretations of those policy terms and create  
 15 inconsistent standards of conduct for Defendant. The policy interpretations sought by Plaintiff  
 16 could also impair the ability of absent class members to protect their interests.  
 17

18           40.     **Federal Rule of Civil Procedure 23(b)(2), Declaratory and Injunctive Relief:**  
 19 Defendant acted or refused to act on grounds generally applicable to Plaintiff and other members  
 20 of the class making injunctive relief and declaratory relief appropriate on a classwide basis.  
 21

22           41.     **Federal Rule of Civil Procedure 23(b)(3), Superiority:** A class action is  
 23 superior to all other available methods of the fair and efficient adjudication of this lawsuit. While  
 24 the aggregate damages sustained by the class are likely to be in the millions of dollars, the  
 25 individual damages incurred by each class member may be too small to warrant the expense of  
 26 individual suits. Individual litigation creates a risk of inconsistent and/or contradictory decisions

1 and the court system would be unduly burdened by individual litigation of such cases. A class  
2 action would result in a unified adjudication, with the benefits of economies of scale and  
3 supervision by a single court.

## 4 VI. CAUSES OF ACTION

### 5 Count One—Declaratory Judgment

6  
7 *(Brought on behalf of the Practice Income Coverage Declaratory Relief Class, Extra*  
8 *Expense Declaratory Relief Class, Extended Practice Income Declaratory Relief Class,*  
9 *and Civil Authority Relief Class)*

10 42. Previous paragraphs alleged are incorporated herein.

11 43. This is a cause of action for declaratory judgment pursuant to the Declaratory  
12 Judgment Act, codified at 28 U.S.C. § 2201.

13 44. Plaintiff Jagow brings this cause of action on behalf of the Practice Income  
14 Coverage Declaratory Relief Class, , Extra Expense Declaratory Relief Class, Extended Practice  
15 Income Declaratory Relief Class, and Civil Authority Declaratory Relief Class.

16 45. Plaintiff Jagow seeks a declaratory judgment declaring that Plaintiff Jagow's and  
17 class members' losses and expenses resulting from the interruption of their business are covered  
18 by the Policy.

19 46. Plaintiff Jagow seeks a declaratory judgment declaring that Aspen is responsible  
20 for timely and fully paying all such claims.

### 21 Count Two—Breach of Contract

22  
23 *(Brought on behalf of the Practice Income Coverage Breach of Contract Class, Extra*  
24 *Expense Breach of Contract Class, Extended Practice Income Breach of Contract Class, , and*  
25 *Civil Authority Breach of Contract Class)*

26 47. Previous paragraphs alleged are incorporated herein.



7. Such further and other relief as the Court shall deem appropriate.

## VII. JURY DEMAND

Plaintiff demands a jury trial on all claims so triable.

DATED this 10th day of August, 2020.

KELLER ROHRBACK L.L.P.

By: s/ Amy Williams-Derry

By: s/ Lynn L. Sarko

By: s/ Ian S. Birk

By: s/ Gretchen Freeman Cappio

By: s/ Irene M. Hecht

By: s/ Karin B. Swope

By: s/ Maureen Falecki

By: s/ Nathan L. Nanfelt

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By: s/Alison Chase

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